

13 November 2017

Samuel Coleman, Acting Regional Administrator
Region 6, Environmental Protection Agency
Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733
(transmitted via email to gray.david@epa.gov)

Re: Request for emergency action under Section 303 of the Clean Air Act

Dear Regional Director Coleman:

I am a professor of environmental and natural resources law at the University of Colorado Law School and an unpaid member of the Board of Directors for an organization called Earthworks. Among other things, Earthworks has pioneered the use of infrared video cameras by citizen groups to detect volatile organic compound emissions from industrial facilities around the country. In conjunction with a recent Earthworks Board meeting held in New Orleans, Louisiana, our Board Chair, Wilma Subra, organized a tour of the area near the Dupont/Denka neoprene production facility in St. John the Baptist Parish, and arranged for us to talk with some members of the community who are impacted by emissions from the Dupont/Denka plant. I was appalled by what I learned during that tour, and the factual record that is now available from the EPA should appall anyone who believes that our environmental laws are supposed to protect our communities, and especially the most vulnerable members of our communities, such as children and the elderly, from the adverse effects of industrial pollution. In the case of the communities near the Dupont/Denka plant our environmental laws have plainly failed us and I write to you as a private citizen and as expert in the field of environmental law to ask that you invoke Section 303 of the Clean Air Act to address this problem without further delay. I have included my affiliation in this letter for identification purposes but the views expressed here are my own and not those of the University of Colorado Law School.

The facts and the record in this case are clear and indisputable. In a memorandum dated May 25, 2016, the EPA reported on its 2010 Integrated Risk Information System (IRIS) assessment of chloroprene. See <https://www.epa.gov/la/laplace-louisiana-memo-integrated-risk-information-system-iris-assessment-chloroprene> That report concluded that chloroprene is “likely to be carcinogenic” and that lifetime exposure to concentrations of 0.2 µg/m³ posed a cancer risk of 100 in 1 million (1 in 10,000) – a level that the EPA deems the “upper level of acceptability for risk-based decisions.” Since May 25, 2016, the EPA has been sampling ambient levels of chloroprene every three days at six sites near the Dupont/Denka plant,

which is the sole source of chloroprene. The results of this monitoring are shocking and reveal that residents of the area around the Dupont/Denka plant are regularly exposed to chloroprene levels that far exceed the levels that the EPA deems an acceptable risk. See <https://www.epa.gov/la/denka-air-monitoring-summary-sheet-2>. For me, the most gut-wrenching data was that from the monitoring station near the Fifth Ward Elementary School. That data reveals consistent and egregious exceedances of safe chloroprene levels. The table that I have compiled below illustrates the severity of the problem.

Date	Chloroprene levels in $\mu\text{g}/\text{m}^3$	Rate in excess of $0.2\mu\text{g}/\text{m}^3$ (EPA's upper level of acceptability)
10/20/2017	13.7 $\mu\text{g}/\text{m}^3$	68.5 times EPA standards
10/11/2017	15.7 $\mu\text{g}/\text{m}^3$	78.5 times EPA standards
10/05/2017	23.2 $\mu\text{g}/\text{m}^3$	116 times EPA standards
9/26/2017	21.5 $\mu\text{g}/\text{m}^3$	107.5 times EPA standards
9/11/2017	17.1 $\mu\text{g}/\text{m}^3$	85.5 times EPA standards
8/9/2017	26.2 $\mu\text{g}/\text{m}^3$	131 times EPA standards
4/14/2017	51.1 $\mu\text{g}/\text{m}^3$	255.5 times EPA standards
1/14/2017	75.1 $\mu\text{g}/\text{m}^3$	375.5 times EPA standards
12/21/2016	37.4 $\mu\text{g}/\text{m}^3$	187.5 times EPA standards
11/18/2016	23.4 $\mu\text{g}/\text{m}^3$	117 times EPA standards
11/3/2016	28.9 $\mu\text{g}/\text{m}^3$	144.5 times EPA standards
10/31/2016	66.4 $\mu\text{g}/\text{m}^3$	332 times EPA standards
10/25/2016	33 $\mu\text{g}/\text{m}^3$	165 times EPA standards
9/4/2016	34.7 $\mu\text{g}/\text{m}^3$	173.5 times EPA standards
8/29/2016	38.4 $\mu\text{g}/\text{m}^3$	192 times EPA standards
7/18/2016	44.3 $\mu\text{g}/\text{m}^3$	221.5 times EPA standards

On the day we visited the area around the Dupont/Denka facility we saw little children playing on the playground at the Fifth Ward Elementary School. It broke my heart to think that these small, innocent children were breathing invisible toxic fumes that could exceed by more than 300 times the level that the EPA deems to be safe.

I know that others are involved with legal challenges that seek remedies for the people who live in and around the communities near the Dupont/Denka facility. Perhaps these challenges will ultimately provide the community with the relief they deserve. But it could take years before those challenges are resolved. The innocent children at the Fifth Ward Elementary School do not have years. They need relief now. Fortunately, the EPA has available to it a clear path for redressing the air pollution problems facing the communities near the Dupont/Denka plant. Section 303 of the Clean Air Act is entitled “emergency powers” and it reads as follows:

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source ... is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air

pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

As you undoubtedly know, the invocation of Section 303 by the EPA does not depend on showing any violation of law. All that one must show is that there is an imminent and substantial endangerment to public health. The data reported on your own website quite clearly shows that the residents around the Dupont/Denka facility are facing an imminent and substantial threat to their health and well-being. ***The EPA thus has the legal authority and the moral responsibility to take action immediately to redress this problem.***

If it were your children or mine playing on the playground at the Fifth Ward Elementary School, I am quite sure that we would not tolerate the air quality conditions that face the children who play there now. No children, indeed no people in this country or anywhere in the world should have to face this invisible but grave threat to their health. I implore you to act immediately to protect these children and indeed all of the residents of the communities around the Dupont/Denka facility.

I am making this request pursuant to the authority provided at 5 U.S.C. §555(b) of the Administrative Procedure Act, which authorizes "an interested person [to] appear before an agency ...for the presentation...or determination of an issue...in connection with an agency function." Please respond to this request within a reasonable time as required by this provision. Should you decline to take the action that I am requesting, please provide me with a brief statement of the grounds for your decision as you are required to provide under 5 U.S.C. §555(e).

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Squillace", written in a cursive style.

Mark Squillace

cc: Chuck Carr Brown, Secretary

Louisiana Department of Environmental Quality
Post Office Box 4301
Baton Rouge, Louisiana 70821-4301
(transmitted via email to deq-wwwofficeofthesecretarycontact@la.gov)